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2 **MODEL QDRO LANGUAGE FOR ACTIVE MEMBERS**
3 **OF THE NORTH DAKOTA 457**
4 **DEFERRED COMPENSATION PLAN**
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8 STATE OF NORTH DAKOTA
9 COURT

IN DISTRICT

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11 COUNTY OF _____ JUDICIAL DISTRICT
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Plaintiff,

vs.

)
)
) QUALIFIED DOMESTIC
) RELATIONS ORDER
)
)

Defendant

) Case No. _____
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21 This Order is intended to meet the requirements of a "Qualified Domestic Relations Order"
22 relating to the North Dakota 457 Deferred Compensation Plan, hereafter referred to as the "Plan."
23 The Order is made pursuant to N.D.C.C. § 54-52.2-03.3. The Order is an integral part of the
24 judgment entered on [**DATE OF DIVORCE**] granting a divorce to the above-entitled parties.

25 [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable
26 distribution of marital property between spouses and former spouses in actions for dissolution of a
27 marriage.] **[OR]** [This Order is drawn pursuant to the laws of the state of North Dakota relating to
28 the provision of child support to a minor child in actions for dissolution of a marriage.].
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3 **BACKGROUND INFORMATION**
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5 **[MEMBER'S NAME AND SOCIAL SECURITY NUMBER]** is the participating member
6 whose last known address is **[MEMBER'S ADDRESS]**. The member's date of birth is **[**
7 **MEMBER'S D.O.B.]**.

8 **[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER]** is the
9 Alternate payee whose last known address is **[ALTERNATE PAYEE'S ADDRESS]**. The
10 alternate payee's date of birth is **[ALTERNATE PAYEE'S D.O.B.]**.

11 The participating member and the alternate payee were married on
12 **[DATE OF MARRIAGE]**.

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14 IT IS HEREBY ORDERED THAT:
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16 **I. ACCOUNT DIVISION**

17 NOTE: Account division must be based on the member's account balance in each account
18 to which the order applies. The member's account balance can be obtained by
19 contacting the investment provider company. Please contact the NDPERS office to
20 obtain the participating member's investment provider affiliation, and notify
21 NDPERS staff that this information will be used for the purpose of preparing a
22 domestic relations order.

23 The member's account is divided as follows: The alternate payee is awarded **[\$]**
24 of the member's account balance of **[\$]** as of **[DATE OF DIVORCE]**.
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1 **II. TIME OF DISTRIBUTION TO ALTERNATE PAYEE**

2 Upon acceptance of this order as a Qualified Domestic Relations Order by the North Dakota Public
3 Employees Retirement System Board of Trustees, the amount awarded to the alternate payee
4 shall be transferred into a separate bookkeeping account on behalf of the alternate payee.

5 Alternate payee shall be entitled to any earnings or losses accruing on the alternate payee's share
6 from the date of divorce to the date of the transfer of funds by the Plan to the alternate payee's
7 account. Distribution of the alternate payee's account balance may begin at any time after the
8 transfer of the alternate payee's funds into the alternate payee's account, and must be made as a
9 lump sum payment within one hundred twenty days (120) of the later of the board's acceptance of
10 the Qualified Domestic Relations Order or the entry of the Order by the Court. However, any
11 distribution will be subject to any restrictions imposed on the Participating member's account.

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13 **III. LIMITATIONS OF THIS ORDER**

14 (Note: Order must reflect all provisions of this section.)

- 15 A. This order recognizes the existence of the right of the alternate payee to receive all
16 or a portion of the benefits payable to the participating member as indicated above.
- 17 B. Nothing contained in this Order shall be construed to require any Plan or Plan
18 administrator:

- 19 1. To provide to the alternate payee any type or form of benefit or any option
20 not otherwise available to the participating member under the Plan.
- 21 2. To provide the alternate payee benefits, as determined on the basis of
22 actuarial value, not available to the participating member.
- 23 3. To pay any amounts to the alternate payee that are required to be paid to
24 another alternate payee under another order previously determined by the
25 Plan administrator to be a qualified domestic relations order.
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- 2 C. If the participant or alternate payee receive any distribution that should not have
- 3 been paid per this order, the participant or alternate payee is designated a
- 4 constructive trustee for the amount received and shall immediately notify NDPERS
- 5 and comply with written instructions as to the distribution of the amount received.
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- 7 D. Alternate payee is ORDERED to report any payments received on any applicable
- 8 income tax return in accordance with Internal Revenue Code provisions or
- 9 regulations in effect at the time any payments are issued by NDPERS. The
- 10 investment provider is authorized to issue Form 1099R, or other applicable form on
- 11 any direct payment made to alternate payee. Plan participant and alternate payee
- 12 must comply with the Internal Revenue Code and any applicable regulations.
- 13 E. Alternate payee is ORDERED to provide the Plan prompt written notification of any
- 14 changes in Alternate Payee's mailing address. NDPERS shall not be liable for any
- 15 failure to make payments to alternate payee if NDPERS does not have a current
- 16 mailing address for alternate pay.
- 17 F. Alternate payee shall furnish a certified copy of this Order to NDPERS.
- 18 G. Subject to the provisions of the IRC Sec. 457 (b) and the Plan, if the alternate
- 19 payee dies before receiving distribution of the entire amount contained within the
- 20 alternate payee's account, the alternate payee's remaining account balance shall
- 21 be paid to the alternate payee's designated beneficiary or, if none, to the alternate
- 22 payee's estate. Alternate payee may designate a beneficiary by filing a beneficiary
- 23 designation with the investment provider.
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1 H. If the participant dies any time after this Order or an amended version of this Order
2 is accepted by NDPERS as constituting a Qualified Domestic Relations Order, the
3 alternate payee's benefits under the plan shall not be affected.

4 I. By consenting to this Order, the participant agrees that the Plan, the Plan Trustees,
5 NDPERS and any investment provider to the plan are hereby released from any
6 further claim by participant with respect to the benefits set aside in this Order for the
7 alternate payee.

8 J. By consenting to this order, the alternate payee agrees that any payments made to
9 the alternate payee shall be reduced by the required income tax withholding.

10 Alternate payee hereby releases the Plan, the Plan Trustees, and NDPERS from
11 any further claim with respect to that amount of money withheld for income tax
12 purposes from the benefits set aside for the alternate payee.

13 K. By consenting to this order, the alternate payee affirms the alternate payee's
14 understanding that the alternate payee will be responsible to direct the investment
15 of the alternate payee's fund balance and that the alternate payee is solely
16 responsible for the investment results of the alternate payee's fund balance. The
17 alternate payee hereby releases the Plan, the Plan Trustees, NDPERS, and the
18 investment provider from any liability or further claim for any election or investment
19 decision the alternate payee makes based on information provided to the alternate
20 payee pursuant to N.D.C.C. chapter 54-52.2-03.3.

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L. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If the System determines at any time that changes in the law, the administration of the Plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

SIGNED this _____ date of _____, 20____.

JUDGE PRESIDING